

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WALTER W. THIEMANN, <i>et al.</i> ,)	Case No. C-1-00-793
Plaintiffs,)	(Judge Sandra S. Beckwith)
)	(Magistrate Judge Timothy S. Hogan)
-v-)	
OHSL FINANCIAL CORPORATION, <i>et al.</i> ,)	
Defendants.)	
)	

**OHSL AND PROVIDENT DEFENDANTS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION TO CERTIFY THE CONSOLIDATED AMENDED COMPLAINT
WITH MEMORANDUM IN SUPPORT AND ATTACHED PROPOSED
SUPPLEMENTAL MEMORANDUM**

MOTION

The OHSL and Provident Defendants move this Court for leave to submit the attached supplemental memorandum in opposition to Plaintiffs' motion for class certification. The reason for this Motion is more fully explained in the attached Memorandum in Support.

Dated: April 23, 2004

Respectfully submitted,

/s/ James H. Greer

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MEMORANDUM IN SUPPORT

In accordance with the Court's Scheduling Order, the parties filed their opening round of class certification briefs in December, 2003 and January, 2004. (docs. 221, 233, 244, 247, 251). As noted by these Defendants in their memorandum opposing class certification, briefing on the issue of certification was done without the benefit of class discovery. (See Defendants' Opp. (doc. 244) at 2, n.2). Defendants therefore anticipated the need for supplemental briefing. *See Prado-Steiman v. Bush*, 221 F.3d 1266, 1273-74 (11th Cir. 2000); *Simon v. Phillip Morris, Inc.*, 200 F.R.D. 21, 41 (E.D. N.Y. 2001).

Class discovery is still not complete and Defendants therefore continue to anticipate the need for further supplemental briefing. Meantime, however, Defendants have discovered information mitigating against class certification due to further evidence suggesting the inadequacy of counsel for the putative class, which was discussed in The Provident and OHSL's Memorandum Opposing Class Certification. (doc. 244 at pp. 14-17). The Court can and should consider the ongoing conduct of class counsel in determining whether the alleged inadequacies should preclude certification. *Dubin v. Miller*, 132 F.R.D. 269, 273 (D. Colo. 1990); *Hatch v. Reliance Ins. Co.*, 785 F.2d 409 (9th Cir. 1985); *Kingsepp v. Wesleyan Univ.*, 142 F.R.D. 597 (S.D. N.Y. 1992).

Accordingly, Defendants respectfully request that the Court permit Defendants to file the attached Supplemental Memorandum in Opposition to Class Certification. Defendants have attached a proposed Order granting this Motion for the Court's convenience.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OHSL AND PROVIDENT DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CONSOLIDATED AMENDED COMPLAINT WITH MEMORANDUM IN SUPPORT AND ATTACHED PROPOSED SUPPLEMENTAL MEMORANDUM was served upon the following via electronic mail, this 23rd day of April, 2004.

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By: /s/ James H. Greer